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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 893

ARTHUR HOFFMAN,
Petitioner,
against
SOL A. DANN, et al. and MARY L. GALLO, et al.,
"Respondents", Plaintiffs below,
and
CHRYSLER CORPORATION, et al., and
PAUL C. ACKERMAN, et al.,
Respondents, Defendants below,
and
HERMAN KOENIGSBERG and
VIRGINIA S. JUDSON, et al.,
Respondents, Objectors below,
and
ERWIN H. EZZES,
Petitioner (No. 954, October Term 1964),
Objector below

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF DELAWARE

BRIEF OF SOL A. DANN, PLAINTIFF BELOW, IN SUPPORT OF PETITIONS FOR CERTIORARI

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SUBJECT INDEX

	Page
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Introduction	2-7
Federal Questions Involved	4-5
Briefs Filed by Respondents, Especially Gallo and Chrysler Rife With Inaccurate Statements, Errors and Omissions	5
Injured Stockholders Are Also Entitled to Civil Rights and Liberties and Protection Equal to that Given to Corporations in Delaware	6
Federal Questions were Repeated, Emphasized and Argued before the Supreme Court of Delaware	6-7
Counter-Statement of Facts and History of Litigation	7-19
The Now Prosperous Chrysler Corporation, the Ninth Largest Corporation in America, Faced Ruin a Few Years Ago Until Its Management Was Changed	7-8
Former President Who Agreed to Pay Back $450,000 Admits Corruption Throughout Chrysler Management	9-12
Gallos Institute Suit and Intervene. Double Trouble Begins	12
Counsel for Stockholders filed Petition for $5,000.00 in fees, etc.	12-14

Page

Chrysler Notified of S. E. C. Violations..... 14-15

Dann and His Firm Again Found Themselves in a Helpless Frustrated and "Hamstrung" Predicament 15-16

Lower Court Thereafter Changes Opinion But Designates it "Unreported" 16-17

Appeal by Stockholders in Class Suit Inures to Benefit of All Stockholders..... 17

Dann's Former Delaware Counsel Admitted That the Lower Court Went Too Far and That Court's Opinion Was Erroneous..... 18-19

Argument 19-28

Public Record Must Be Set Straight and True 21

Dann's Argument Before Delaware Supreme Court 22-27

No Case is Limited to or Determines Only "One Man's Freedom"..... 27-28

Conclusion 28

INDEX TO AUTHORITIES CITED

Cases

Hovey v. Elliott, 167 U.S. 409..... 28
Reynolds v. Cochran, 365 U.S. 525..... 28
Strauder v. West Virginia, 100 U. S. 303, 310-12.. 19

Statutes and Regulations

	Page
28 USC, Section 1257 (3)	2
Securities Exchange Act of 1934, 15 USC Sec, 78a, et seq.:	
Section 14(a), 15 USC Sec. 78n(a)	4, 6
Section 27, 15 USC Sec. 78aa	
Rules and Regulations Under Securities Exchange Act of 1934—Rule 14a-9, 17 CFR 240.10a-9	6
14th Amendment to U. S. Constitution	4, 6, 28

TABLE OF CONTENTS OF APPENDIX

Exhibit A—Dann's Objections to Chrysler of False and Misleading Statements in Stockholders' Notice	29-31
Exhibit B—Letter dated February 14, 1964 sent to Chancellor Collins J. Seitz by Sol A. Dann	32-34
Exhibit C—Petition to Stay Proceedings, Reopen Record, etc.	35-37
Exhibit D—Court's Acknowledgment of Dann Letter of February 14, 1964	37-38
Exhibit E—Letter to Chancellor Seitz to Refrain from entering any Order that would approve a "Whitewash Settlement"	38-41
Exhibit F—Letter to Aubrey B. Lank, Amicus, Requesting him to Examine my files and Records	41-42
Exhibit G—Telegram to Chancellor Seitz Requesting Opportunity to File Extensive Amount of Information and Potential Evidence and Leads to Evidence	43

Page

Exhibit H—Excerpts from Order on Certain Matters ruled upon at Hearings on February 7, February 17, and February 24, 1964 (Noting Dann's Objections) 44-46

Exhibit I—Letter dated February 28, 1964 sent to Michael J. Hand by Chancellor Seitz..... 47-48

Exhibit J— Memorandum Opinion (Unreported).. 48-51

Exhibit K—Chancellor's Final Decree and Judgment 51-53

Exhibit L—Opinion of the Supreme Court of Delaware 54-75

Exhibit M—Order of the Supreme Court of Delaware Denying Reargument 76

Exhibit N—Hastings Petition for Reargument..... 77-81

Exhibit O—(Dann) Petition for Re-argument..... 81-90

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This Brief is *in support* of the petitions filed on behalf of Arthur Hoffman in No. 893 and Erwin H. Ezzes in No. 954.

OPINIONS BELOW

The (forgotten) "unrecorded" Opinion of the Chancery Court, and the Opinion of the Supreme Court of Delaware are printed in this Appendix along with other Exhibits at pages 29-90.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 USC 1257 (3) and the rules, regulations and provisions of the Securities & Exchange Act of 1934.

QUESTIONS PRESENTED

1. Did the stockholders' notice contain false and misleading statements, contrary to the S.E.C. regulations?

2. Were the stockholders deprived of equal protection, a fair and impartial hearing, and of their rights, liberties and property without due process of law?

3. Is the Opinion of the Delaware Supreme Court erroneous and the product of a "whitewash" settlement?

INTRODUCTION

This plaintiff respectfully requests this Court to excuse the delay in filing this brief, which is due to fact that this plaintiff had hoped and relied upon "objectors" to fully and accurately explain his position before the court, and because of other circumstances beyond his control.

This plaintiff has been referred to in various ways. In the Court Below. Chancellor Seitz referred to and treated this plaintiff as an Objector (See Ex. H pages 44-46 this Appendix). Defendant would like to have this plaintiff joined to Chrysler wrongdoers and treated as a Respondent.

The side this plaintiff hereinafter referred to as Dann, chooses to be on is that of the stockholders; on the side of the Court; on that side which will result in substantial justice instead of a miscarriage of justice; on that side which will fully inform the Court of all the facts and all the circumstances surrounding these arrangements; on that side which will represent the best interests of the stockholders (if possible like an *Amicus*).

The fact remains that Dann requested the Objectors to take an appeal from the Order of the Chancellor and from the Order of the Delaware Supreme Court, in order to protect his interests and that of all the other stockholders.

> "Equity regards substance rather than form * * * and stresses the intent or spirit of the case. Court of equity * * * will look to the circumstances and not to the form of the transaction. Equity looks to the substance and not the shadow, to the spirit and not the letter * * * it seeks justice rather than technicality, truth rather than evasion, common sense rather than quibbling. * * * It has always been recognized as the right, if not always as the absolute duty, of a Court clothed with the equitable jurisdiction which is here properly invoked, to apply its X-rays to all masks and covers and see through to the real substance." *19 Am. Jur. Equity, Sec. 459, page 317-8.*

> "Even though suppemental brief was filed too late and was not in accordance with requirements of Rule 18(3) of the Ninth Circuit, in complex case involving patent, rule could properly be relaxed, so

as to give Court benefit of counsel's views. *Bergman v. Aluminum Lock Shingle Corp. of America*, C.A. 9th, 1958, 251 F. 2d 801." *Barron and Holtzoff, Federal Practice & Procedure*, 3A, page 139.

When defendants sought to stifle this plaintiff by striking his Brief (not his Appendix) before the Supreme Court of Delaware, this plaintiff represented to that Court:

"Federal Questions Involved

"Striking this plaintiff's Brief and denying to him the rights and remedies prayed for would deprive the stockholders, as well as this plaintiff, of their property rights and remedies without due process of law, contrary to those rights and remedies guaranteed by the Constitution of the United States, more particularly the 14th Amendment.

"This Federal question, together with the Federal question concerning the violations of the rules and regulations of the Securities & Exchange Commission, as referred to in this plaintiff's Appendix, are specifically raised for determination by this Court in order that they may be reviewed, if necessary, by the Supreme Court of the United States or by any other court of Federal jurisdiction.

"This being a stockholders' derivative action, in equity, any appeal taken by and in behalf of any stockholder inures to his benefit, and should be heard '*de novo*' by this Court.

"This Court has the right to review this entire case *de novo*. This case having been removed to this Court by several objectors, there was no need for this stockholder plaintiff to also take an appeal in order to give this Court jurisdiction to review all the matters involved in these settlement arrangements."

"In the case of *Board of Commissioners v. Sanders*, 218 Indiana 43, 30 N.E. 2d, 713, (131 ALR 1048), the Court said:

"* * * when the question is one of a common or general interest of many persons, or where the parties are numerous and it is impracticable to bring them all before the court, one or more may sue or *defend* for the benefit of the whole." (Italics supplied.)

"On page 1052, the Court said:

"If by the terms of the statute one or more may sue or *defend* for the benefit of the whole in the trial court, likewise such person or persons may prosecute or *defend* the action on appeal." (Italics supplied.)

"We are of the opinion that the petitioners in the instant action have alleged a sufficient possibility that the representation of their interests by the plaintiff may be inadequate." *69 ALR 2d, page 561.*

Briefs Filed by Respondents, Especially Gallo and Chrysler Rife With Inaccurate Statements, Errors and Omissions.

Therefore on April 7, 1965, Dann requested the Clerk of the Supreme Court of Delaware to transmit to this Court the following original five documents, namely, "Appendix of Plaintiff Appellee Sol A. Dann", "Brief of Plaintiff Sol A. Dann", "Reply of Sol A. Dann to Motion of Certain Defendants to Strike his Brief", "Petition of Sol A. Dann for Re-Argument", and "Petition for Re-Argument" filed by Hastings firm in behalf of certain plaintiffs below because these documents refute the statement of Gallo and Chrysler.

On the same day I was notified by the Clerk of the Delaware Supreme Court that "Subject papers were received by Supreme Court of U.S. Feb. 9, 1965."

I deem it necessary for this Court to examine these documents *in support of the* pending petitions for certiorari.

Injured Stockholders Are Also Entitled to Civil Rights and Liberties and Protection Equal to That Given to Corporations in Delaware.

Contrary to the representations in the Gallo and Chrysler briefs, the documents referred to clearly set forth that substantial *Federal* and constitutional questions are involved. These were raised before the Court Below, and are of great and of grave public importance and merit the review and consideration of this Court.

These Federal questions were duly, timely and repeatedly raised before Chancellor Collins J. Seitz because the "*stockholders' notice is contrary to SEC regulations.*" (Appendix of Sol A. Dann filed in Supreme Court of Delaware, A-29, A-32, A-33, A-43, A-44, A-45, A-46, A-48, A-50).

Federal questions were repeated, emphasized and argued before the Supreme Court of Delaware.

Page I of Table of Contents of "Brief of Plaintiff Sol A. Dann" refers to the Federal violation that "the stockholders' notice contained statements that were false and misleading, contrary to the S.E.C. regulations."

The Table of Citations on page I-a also refers to "S.E.C. Regulation, Section 240.14-a-9" and "S.E.C. Rule 14-a-5" and "2 Am. Jur. 682, Section 6."

On pages 1 and 2, and Exhibit 2 attached to "Reply of Dann to Motion of Certain Defendants to Strike his Brief," the Federal and constitutional questions were again specifically and clearly raised before the Supreme Court of Delaware.

On pages 6 and 9 of Dann's "Petition for Re-Argument" and the exhibit attached thereto, the Federal and constitutional issues were again raised.

The authority of the attorneys for certain respondents to file a brief in behalf of Karl Horvath without permission and against objections of the Dann firm is questionable. Their authority and power of attorney was revoked after their $50,000 offer to him that was explained in the documents, this plaintiff filed with the lower court.

COUNTER-STATEMENT OF FACTS AND HISTORY OF LITIGATION

This stockholders' litigation was instituted in 1961 because for many years the Management and personnel of Chrysler Corporation was riddled with conflicts of interest, malfeasance and misfeasance and other acts of corruption and mismanagement.

These areas of misconduct are partially described in the Bills of Complaint and the affidavit this plaintiff filed on March 27, 1963 in the Court Below.

The Now Prosperous Chrysler Corporation, the Ninth Largest Corporation in America, Faced Ruin a Few Years Ago Until Its Management Was Changed.

Many years ago Chrysler's former chairman of the Board, K. T. Keller, had an interest in Chrysler's suppliers who were given special privileges and favors too numerous to detail here; except to say that this conflict of interest at the very top seeped down into all levels and resulted in excessive and unnecessary orders, at increased prices, for inferior and defective parts.

This not only increased Chrysler's cost of production and repairs in untold millions, but set a pattern for other officials to imitate and follow, and they did follow, when this became common knowledge in the Chrysler plants.

These corrupt practices became such common knowledge in the market places that manufacturer's agents were told they had to "pay off" to get orders from Chrysler, and many did.

But when this misconduct became common street knowledge, Chrysler lost the reputation of being able to efficiently produce an automobile; to compete with the product and price of other automobile manufacturers.

Its payrolls were padded with nepotism; dealers were resigning their dealerships because customers were complaining of defective cars and favortism was given to those dealers in which officials had an interest. Morale in the corporation dropped below sea level.

Chrysler's products were fast losing public acceptance; its losses as a result thereof were running into the tens of millions.

Many financial analysts were sending out reports of doom, condemning Chrysler's management, recommending its "short sale" and against its purchase. Chrysler stock that was over $100 per share a few years before 1960 dropped to $37 (less than $10 to-day after splits) with no sign of recovery as long as the Keller management remained in power and the Keller policy continued.

This plaintiff at that time and for many years prior, was the owner of over 5,000 shares of Chrysler stock. (Its present equivalent after splitting would be over 20,000 shares.) Beginning in 1958 this plaintiff conferred with members of the Board of Directors of Chrysler and Prudential Insurance Co. to quietly correct these areas of corruption. (The Prudential Insurance Co., was a large Chrysler stockholder, and had also loaned Chrysler 250 million dollars.)

Former President Who Agreed to Pay Back $450,000 Admits Corruption Throughout Chrysler Management.

On February 27, 1964 Michael J. Hand, attorney for William Newberg, sent a letter to Chancellor Seitz which Presumably is a part of the record. He stated therein that:

> "* * * Many of the claims and causes of action asserted by the plaintiff in the Dann and Gallo cases are similar or identical to the claims made by Newberg in the Michigan cases against the defendant * * *."

On page 3 of said letter Mr. Hand said:

> "Newberg in his suit against Chrysler in Wayne County has based his cause of action to set aside his agreement with Chrysler on the following charges which resulted in *fraudulent* representations and inducements and the exercise of *undue influence*, *duress*, and *coercion* upon Newberg:
>
> "1. *That Colbert, Warren, Jones, Trippe (all defendants,* in the Delaware suit), and others, *unlawfully conspired* to use Newberg as a scapegoat behind which to hide and conceal the incompetence, maladministration, neglect, breaches of duty and self-dealing of which some of the co-conspirators were guilty (Paragraph 13).
>
> "2. That the conspiracy was commenced in anticipation of wholesale investigations into such directors' malfeasances, maladministration, neglect, breaches of duty, self-dealing, and other gross improprieties (Paragraph 14).
>
> "3. That upon becoming President of Chrysler, Newberg discovered executive-level practices which constituted favoritism and preference of certain friends, relatives and intimates of top

> executives and that he refused to be silenced by Colbert who feared Newberg would uncover and disclose instances of misconduct, maladministration, etc. (Paragraph 15)."

If they could do this to their "partner", Newberg, it is understandable why and how similar pressures were used on this plaintiff.

This litigation was commenced after outside counsel invited themselves in, and attached and associated themselves with the Dann firm. But they failed and refused to pursue the vast amount of potential evidence, leads to evidence, and information concerning the misconduct of the defendants which they undertook to do. They were more bent on disposing of the litigation by way of "settlement" and consenting to a "whitewash" rather than to vigorously pursue the litigation.

Dann, after learning of various misrepresentations and their purposes, sought to change counsel for the stockholders on several occasions, or bring in other counsel to represent and protect the stockholders, without avail. (They added intervenors with about 10 shares.)

Dann's outside counsel stipulated with the defendants, without his knowledge or consent, not to take the depositions of any defendants until Dann's deposition was completed. This dragged along for over a year. This plaintiff presented himself for examination on many trips to Delaware in an effort to have his deposition completed, but this was repeatedly delayed by excuses, adjournments and misunderstandings, through no fault of this plaintiff. Finally this plaintiff requested that, to avoid further delays, his deposition be promptly completed in Detroit where all his files and records were located, but without success.

While the litigation was in this stymied position, and corrupt officials remained in office, Dann conferred with representatives of Chrysler's outside directors who informed this plaintiff that steps were being taken to remove certain officials and correct the Management of Chrysler and its policies but that they needed to discontinue the litigation to fully accomplish the same.

They claimed that regardless of any amounts that the corporation could recover from any of the wrongdoers, it would be more beneficial not to have the wrongdoings exposed and pursued by litigation. They contended that this litigation (at that time) was affecting the public image of the corpoartion and interfering with changes that they were making and contemplated making in Chrysler's Management.

They insisted that the Chrysler stockholders would be more substantially benefited by foregoing individual recoveries from any defendants than by pursuing explosive litigation and seeking damages (in untold millions) from individuals involved.

This plaintiff was assured by director George Love, Chrysler's present chairman of the board, that if this plaintiff went along with their thinking, the Court and the stockholders would be fully informed

Subject to these conditions this plaintiff thereupon agreed not to pursue (or *nolle prosequi*) the litigation despite and notwithstanding the abundance of information, leads to evidence and potential evidence in his files which supports the allegations in the Complaints, *provided* the Court and the stockholders would be fully informed. This proviso was of utmost importance for the protection of the stockholders and the future welfare of the Corporation.

(As well as hundreds of those who furnished this plaintiff with information.)

It also transferred to the court, and relieved plaintiff of the entire burden of determining whether, in the final analysis the litigation should be pursued.

Gallos Institute Suit and Intervene. Double Trouble Begins.

It was at this juncture that the Gallo plaintiffs intervened, presumably in behalf of the stockholders, and presumably based upon evidence they too gathered of defendants wrongdoings.

But after reading the misrepresentations contained in the Gallo briefs, their purpose of intervening in the settlement negotiations and their implementation is obvious. "Their garb is the dress of Jacob, but their voice is that of Esau."

In disregard of the proviso and conditions of my going along with their thinking, limited depositions were taken by pre-arrangement of questions without regard to the information and potential evidence in this plaintiff's files (and in the absence of this plaintiff or any member of his firm). For the purpose of preparing a record that would persaude the Chancellor to approve the so-called settlement. *(Depositions of defendants were taken only after plans for settlement were tentatively agreed to.)*

Counsel filed a verified petition for fees and supporting affidavits in Delaware March 1963 (to persuade Court's decision on their request for 5 million dollars in fees) which contains statements of wrongdoing and merit of claims, inconsistent with and contrary to "unclear" statements (to influence decision of stockholders) in stockholder's notice of April 1963 stockholders' meeting held in Detroit, Michigan.

The Appendix and Exhibits Dann filed with the Court Below also show that Dann was assured and led to believe that there would be no approval of settlement until after the court was first fully informed of the areas of corruption and wrongdoing and merits of plaintiffs claims.

When this plaintiff testified before the Chancellor, he offered and attempted to introduce into evidence and turn over to the *amicus* and the objectors all of these documents; he attempted to make clear that he was persuaded by his co-counsel, "against his better judgment," to make the narrow, technical distinction between the word "evidence", as used in the strict legal sense, (that which could be introduced *at that time*, in Court, without objection, and that was in a form not subject to the hearsay rule, or other technical objections,) as distinguished from potential evidence or leads to evidence.

Dann was informed by his outside counsel that it was in this strict, narrow, technical sense that Chrysler used the word "evidence" (as then existing in the court record) in the stockholders' notice. But all the information of wrong doings would be placed before the Chancellor before the final approval of the settlement or dismissal of the litigation.

This plaintiff therefore testified before Chancellor Seitz that *keeping this narrow, technical distinction in mind*, "the information and documents would not be in such form in which it could be introduced as "evidence" *at that time*, until witnesses testified thereto; that until that time it was according to *their* strict definition of the word evidence, in the form of information, work product or potential evidence.

When this plaintiff was asked to give one or two illustrations, he testified that he was for example in posses-

sion of a Dun & Bradstreet report which showed that W. Alton Jones, at the same time he was a director of the Chrysler Corporation, was also a director of and owned most of the stock of, two Chrysler suppliers (which he originally purchased for about 4 million dollars) and later, according to the Dun & Bradstreet report, sold for 24 million dollars, (after this plaintiff began investigating the affairs of Chrysler.) But according to the strict definition he was required to give to the word evidence, this Dun & Bradstreet, report, as such, could not then and there be introduced as "evidence".

Also that the transcripts of depositions taken of Newberg and Minor in other litigation was not admissible as "evidence" in this case before Chancellor Seitz, unless agreed to or the objection waived.

Chrysler Notified of S. E. C. Violations.

This plaintiff, at that time, again renewed his objections to the stockholders' notice, which had previously been incorporated in a letter to the Chrysler Board of Directors dated (March 20, 1963) this letter was introduced in evidence as Ex. OX 428 and is attached to this Appendix as Ex. A. This letter to the Chrysler Board of Directors explained how defendants were violating and aborting the so-called settlement arrangements and the violation of the S.E.C. regulations.

When Chancellor Seitz filed his Opinion, dealing primarily with the (advantages) from the change of incentive plan and only briefly to the real consideration for not pursuing the litigation, this plaintiff immediately requested outside counsel to file a petition for reconsideration and to reopen the record as per the details of my

letters to them in the Appendix Dann filed in Delaware which they refused to do.

When the Dann firm also notified Delaware counsel to request the court for time for them to file such a petition the Court informed Dann and his firm through Delaware counsel that they had no right to make such a petition and that Dann and his firm had no right to speak except through Delaware Counsel, who were ostensibly representing him.

Dann and His Firm Again Found Themselves in a Helpless, Frustrated and "Hamstrung" Predicament.

This plaintiff therefore "disengaged" himself from his counsel and informed Chancellor Seitz of the "phony" and "improper" depositions and other improprieties resorted to, and filed a "Petition to * * * Reopen the Record," and among others requested the Chancellor to:

> "take all the appropriate disciplinary or investigative actions necessary under the circumstances pointed out to you at the hearing and if this Court finds it necessary, to then refer this entire matter to the authorities having jurisdiction thereof, including the American Bar Assn., local bar associations, and also to the Attorney General's office to determine whether a Grand Jury or other means be employed to determine whether there has been any conspiracy to deceive the Court or the stockholders."

The letters accompanying the Exhibits which were forwarded to the court under dates of February 14th and 18th, 1964 were included in the appendix filed in the Court Below. In this appendix, they are Ex. B & C & E (32-41). Copies of these letters to the Court were also sent to the *amicus*, who was supposed to have examined, *but who in fact, never examined* any of the potential evidence of wrongdoing on

the part of the defendants in my files. When the amicus refused to take any action I notified him on February 21, 1964 that I felt that it was his duty to do so under the circumstances, as appears from Ex. F in the attached Appendix. Pp. 41-42.

Lower Court Thereafter Changes Opinion.
But Designates it "Unreported".

The Lower Court denied my Petition to Reopen, as per Ex. D & H pp. 37 and 44 in the attached Appendix, but on March 4, 1964 rendered an "unrecorded" Opinion clarifying his previous Opinion. He said that in approving the settlement he was not deciding or determining the merits of the lawsuit. (See Ex J) pp. 48-51.

In this "forgotten" Opinion the Court said:

> "* * * In discharging its function of evaluating the fairness of the settlement, *the Court did not directly determine the merits of the litigation.* It merely weighed the claims and posible defenses in order to arrive at a determination as to whether the settlement was fair. * * *"

> "* * * to remove any doubt that the Court was merely approving the settlement rather than directly deciding the merits of the lawsuit, *I will strike from Mr. Corroon's proposed interlocutory and final orders wherever they appear the words 'on the merits'* * * *." (Emphasis supplied.) (Pages 3 and 4 of Unreported Opinion, Ex. J, pp. 48-51.)

On March 9, 1964, the Court below specifically referred to said Opinion and Order of March 4, 1964. See Ex. H (pp. 44-46).

In addition to his petition to reopen, Dann also notified the Court of the various violations and improper manner

in which the so-called settlement arrangements were implemented, contrary to the S.E.C. regulations by letter of February 21, 1964 and later by telegram, Ex. G (p. 43).

Appeal by Stockholders in Class Suit Inures to Benefit of All Stockholders.

This plaintiff requested the objectors to appeal to the Supreme Court of Delaware, he was of the opinion then, and is still of the opinion, that stockholders' litigation, unlike litigation generally, inures to the benefit of all the stockholders for whose benefit the action is brought. No named plaintiff has any greater or lesser rights or obligations than others, named or unnamed; every *pursuance* inures to the benefit of all, as a class.

After the appeals to the Supreme Court of Delaware, Dann filed an Appendix containing many of the documents hereinbefore referred to. But when Dann filed a Brief in pursuance of and predicated thereon, not to defendants' liking, they filed a Motion to Strike Plaintiff's Brief, (not his appendix) which this plaintiff replied to in a further detailed document entitled: "Reply of Sol A. Dann to Motion of Certain Defendants to Strike his Brief". This plaintiff again emphasized the many wrongs concerning these settlement arrangements and their implementation which are *contrary to the best interests of the stockholders.*

After the Supreme Court filed its Opinion primarily predicated on changes in "The incentive Plan" stating that in their opinion this was sufficient consideration for release of defendants and dismissal of case, because "in their opinion", there was little or no merit to the actions, this plaintiff filed a Petition for Re-Argument (Ex. O), (p. 81). This again pinpoints the disgraceful way this settlement was accomplished and legal rights violated, also pointing out other errors in the court's opinion.

Dann's Former Delaware Counsel Admitted That the Lower Court Went Too Far and That Court's Opinion Was Erroneous.

Even the Delaware counsel for stockholders filed a Petition for Rehearing because the Opinion was contrary to the facts and "Limited Depositions" that was prepared *for settlement purposes only* (Ex. N.) Pp. 77-81.

Even they could not digest and stomach the lower court's opinion. So they too filed a petition for rehearing, finally admitting to the "*Limited Depositions* that were taken" to support the so-called settlement. *Without which support the settlement would fall and should fall.*

Their petition says:

> "The fact is that while plaintiffs had conducted some investigation on their own, they had been prevented by Court Order from taking discovery prior to the commencement of settlement negotiations. Limited discovery was agreed to by defendants in connection with the contemplated settlement. Any statements concerning evidence were confined to the state of the record established by the limited discovery and did not undertake to state what might develop in the event that the causes of action should proceed to trial."
>
> "The notice which was sent to the stockholders by Chrysler Corporation pursuant to this Order of the Chancellor set forth the state of the admissible evidence which had been developed up to that point, and did not consider the probability of developing other evidence in the event that litigation should be pursued. The plaintiffs below did not and have not

admitted or agreed that the claims were 'worthless'. Moreover, plaintiffs have always taken the position that in view of the change in management at Chrysler it was in the best interest of the Company to settle the litigation rather than prosecute the claims through involved and costly litigation which would distract Chrysler personnel from corporate activities" (See pp. 77-81).

After the Supreme Court of Delaware denied the Petition for Re-Argument, this plaintiff requested the objectors to appeal to this Court as he had also previously requested them to do.

ARGUMENT

"State Courts are required to protect federally created rights."

Strauder v. West Virginia, 100 U.S. 303, 310-12.

It is conceded that Chrysler benefited by a "change in Incentive Plan" that now gives its officials even more than formerly; but now from profits of Chrysler that he was hired and paid to serve, instead of permitting him, to divert his conflicting efforts to his take of profits from a supplier corporation he had a greater interest and "incentive" in. But this was not the consideration that induced Dann not to pursue the litigation.

One of the great problems facing injured stockholders is the difficulty to obtain the help of competent lawyers free of conflicts of interest, free of the direct and indirect pressures exerted upon them by and through clients and "friends", free of the incentive to settle cases for "changes in incentive plans."

It is practically impossible for a stockholder to muster sufficient strength to fight the tremendous power of the corporate monopoly of legal talent available to defendants, *at corporate expense*, in stockholders' litigation. It remains to . seen how foolish it was for me to have tried.

Courts should request the S.E.C. to intervene in all stockholders litigation in a publicly owned company, to prevent or discourage strike suits, to prevent disposal of actions against corrupt officials merely by changing *their* "incentive plan". This would also unmask those who attach themselves as "objectors" or associated counsel, only to crush and prevent stockholders from pursuing their causes for action. With such "friends" one is better off with enemies he can watch. (Dann informed the Securities and Exchange commission and U. S. Department of Justice of the matters involved herein and requested them to intervene.)

Judge Ganey said it was not good for this country to permit rigged bids among the electrical appliance companies.

It was not good for America to conceal or tolerate conflicts of interest of Sherman Adams, Bobby Baker, or Billy Sol Estes. It is equally not good for Chrysler to permit any official like K. T. Keller who started this corrupt policy to remain on Chrysler's pay roll at the rate of $75,000 a year even though it be as a "consultant" in name only.

It is just as important to prevent corruption from destroying a large publicly owned corporation from within, as to prevent Russia from dropping an A bomb on the Chrysler plant.

There are over 100,000 stockholders in Chrysler. There are nearly twenty million stockholders in other American

corporations who need protection from any management guilty of conflicts of interests and other acts of wrongdoing that frequently destroys the morale of the entire corporation from within.

It has been aptly said: "The criminal is a person with predatory instincts who has not sufficient capital to form a corporation".

The Delaware Supreme Court's confirmation of the so-called settlement arrangements merely eliminated the necessity of long and costly litigation.

Although the decision of the Delaware Court amounts to a "judicial whitewash", Chrysler did change its management which was one of the primary purposes that the litigation accomplished.

Public Record Must Be Set Straight and True.

It was necessary for the Court to know the great need there was to institute this litigation and prevent the conflicts of interest in supplier corporations, increased costs, padding of bills, gifts for favors, nepotism, and employment of over 7000 unnecessary white collar employees (that Chrysler discharged after Dann's complaints) and other intolerable conditions in Chrysler. The stockholders were entitled to this information, and even the conscientious members in Chrysler's management, need to be made to understand that such corrupt conditions will not be tolerated by stockholders in the future in this or any other American corporation.

When it is disclosed that a Judge is corrupt he is not retained and rewarded with an increased salary, or retired as a "consultant" at $75,000 a year.

Dann's Argument Before Delaware Supreme Court.

This plaintiff in his argument before the Supreme Court of Delaware requested the Court to reverse the decision of Chancellor Seitz and reject the settlement arrangements because of "fraud, misrepresentations, overreaching, undue influence, no meeting of the minds, and no consideration, as set forth and indicated in the appendix, brief, and reply to the defendants' motion to strike his brief.

This plaintiff told the Delaware Supreme Court:

> "I am also opposed to any order that confirms these settlement arrangements and the unconscionable and improper manner in which they were implemented.
>
> "I am opposed to any order that dismisses any of these cases or that releases any of these defendants, at least not until after the court and the stockholders have been fully, clearly and truthfully informed. I respectfully submit that these reasons can only be more elaborately discussed and placed before this Court by the taking of additional testimony, by reversing the decision of the court below, by returning this case to the lower court to reopen the hearings, under proper instructions.
>
> "Permit me also to make very clear that if these cases have no merit, if there was no wrongdoing, if the institution of this litigation did not accomplish any benefit to Chrysler, then these cases should be summarily dismissed without any change in incentive plan, without any need for any consideration or the payment of any fees to any lawyers representing any of the plaintiffs.
>
> "But I submit that these ifs cannot be properly and fully determined by the present state of the record. After reading the half-truths and the mis-

leading statements in the briefs of the defendants, the need to file further reply briefs and appendices is imperative and I so request this Court for an opportunity to do so.

"Mr. Dabney in his deposition * * * clearly shows that he testified and stated why the word 'evidence' was used in the stockholders notice in the strict, technical, limited meaning; and as he testified, as he said, as a lawyer, he was using the word 'evidence' to refer to admissible evidence in a court, as distinguished from even depositions taken in other cases or potential evidence that leads to evidence, which was the very distinction they persuaded me to make and then to use against me.

* * * * *

"The incentive plan is much to do about nothing. The scramble over this dry rubber bone that Chrysler threw out is most interesting. This bone of contention was not necessary as consideration to dismiss worthless lawsuits. The change in incentive plan is too often used and attended with shadow boxing and sham battles that deceives and injures no one but the stockholders.

"It should not deceive any of the courts. Courts need not close their eyes or minds when it is sought to dispose of stockholders litigation, and it certainly should not close them when a change in incentive plan is used. If anything at all, that should arouse the Court's suspicion that there's something wrong; that there is something wrong in this case, as I pointed out to the court below and to this Court.

"This case reminds me of a policeman who closes his eyes. These lawyers are policemen for the protection of the corporation and the stockholders, and this Court.

"Delaware has become a symbol of corporations. It is only right that a Delaware court make a good

start in the right direction by no longer permitting the so-called changes in stockholders incentive plan to be rung down as the last curtain on litigation that is instituted for the protection of stockholders rights against the corruption and wrongdoing by those directors in a corporation who have a fiduciary obligation.

"The disposal—and 'disposal' is the right word to use, I suppose—of stockholders litigation commenced to expose corruption and punish the wrongdoers should not encourage the use of this type of curtain.

"I respectfully submit that the stockholders are not the wrongdoers in this case and should not be punished. And if I might add, least of all, myself.

"In the brief that was filed, in the few minutes that are left to me—it would take many hours and extensive briefs to point out to this Court the shameful and disgraceful way this stockholders litigation is being disposed of—they talk a lot about the stockholders vote. I submit stockholders vote like a rubber stamp. They are solicited by the management to return their proxies to the corporation.

"The emphasis that has been placed upon the stockholders vote in this case lacks the merit it seeks from this Court.

"In the brief it is stated here that the change in incentive plan was suggested by the stockholders.

"Mr. Dann: I am referring to the brief of Mr. Corroon. That is untrue. From the very beginning that was a bone thrown out by Chrysler and one of the first things I was approached by, approached with, I should say, to have this litigation discontinued, which would have permitted the old management to remain.

"They refer here to the fact that plaintiffs' counsel conceded and concluded there was no evidence. If you examine Mr. Dabney's deposition, you will find there where he states in no uncertain terms how unwise it was—he used the word 'unwise'—it was for Chrysler to have persuaded him to okay that kind of a stockholders notice. He admits I had nothing to do with it. And as you will see from the correspondence, as soon as it came to my attention, I took all the action that one could humanly take and still remain in his right mind with all the pressures. I refer to those pressures in that letter that I sent to the board of directors which is an exhibit in this case. I refer to all those pressures.

"Objectors—just what are these objectors doing in this case? They forced me, together with the Gallos, to bring five or six large suit cases of documents down to Delaware that contain the informers' statements about the many acts of corruption. The Gallos were invited to come to Detroit where it would be convenient to go over this before this stipulation was entered into.

"They talk about business judgment here. What businessman ever makes a judgment without knowledge of the facts? And yet when I brought all of these records down, for two days, two solid days, I sat in my hotel room while one of the Nemsers just turned pages. Only one objector showed up for about five or ten minutes, looked at two or three sheets and then left.

"Are these conscientious objectors? I have asked myself that over and over again. And what are the Gallos doing in this case? What interests are they serving? What is their purpose? From the very outset they were chiefly interested in seeing these cases dismissed.

"Justice Wolcott: Mr. Dann, you have two minutes.

"Mr. Dann: They talk here on page 3 that prior to the filing of the stipulation of settlement, plaintiffs' attorneys were able to make an extensive investigation by way of depositions, and so on and so forth. That is not true. As a matter of fact, I attached a copy of the questions that were given to Keller in advance, I learned about it later from another gentleman that they gave Keller the questions in advance as to the scope of the inquiry. Those were the only questions they were permitted to ask. And I took that copy from him and I gave you a Xerox copy of it.

"Is this an extensive investigation?

"And Mr. Dabney in his deposition says they were limited as to who they could call as a witness, who they could depose. As a matter of fact, I think they even entered into a stipulation to that effect, as part of the wonderful settlement arrangements. They couldn't go beyond what Chrysler was willing to permit plaintiffs' counsel to investigate.

"Of course, these statements here on page 4 are untrue that plaintiffs' counsel concluded that there was no evidence available to them, because it was available. There 'evidence' is used in the broad sense as the layman uses the word 'evidence', meaning potential and leads to evidence.

"And the letters over the signature of Mr. Dabney and Mr. Robinson clearly indicate, as they stated there, we did not agree to that but we will at the time of the hearing on the petition for fees point all of this corruption out, we will bring it before the court. And that is why, as I testified, I was so sick of the whole mess, and there was only one thought in my mind, and that is, it was the duty of the court below to go into this matter.

"Justice Wolcott: Your 15 minutes are up.

"Mr. Dann: I would appreciate the opportunity to file a brief in order to place before this Court all of the matters that I think are imperative to call to this Court's attention." (This was denied.)

It is now apparent to whom the Gallos, who instituted their suit and intervened after the settlement negotiations bogged down, owe their allegiance.

No Case Is Limited to or Determines Only "One Man's Freedom".

This appeal presents a rare opportunity for this Court not only to set this record straight, but to set a precedent in stockholder's litigation for other Courts to follow; for lower Courts that presently close their eyes with shame as they approve stockholder settlements, they know are based upon "misrepresentations," courts should be able to preside over stockholders litigation with their eyes open.

Unless courts of all states, *including the State of Delaware* are on their guard against settlements of actions against wrongdoers by "changes in incentive plans;" unless corruption is exposed; unless stockholders are given the practical unhampered and equal opportunity to establish their causes for action instead of permitting corporate defendants to stall, indefinitely delay and exhaust plaintiff stockholders;

Unless the plaintiffs in this case are given the right to establish that their causes for action have merit based upon the information and leads to evidence furnished to this plaintiff; (and *presumably* to the other plaintiffs) if cases can be whitewashed in the manner these were.

Then those in possession of information concerning acts of corruption and wrongdoing in this and other corporations will be discouraged and refrain from coming forward with such information; violations of the law will be encouraged, respect for one's fiduciary obligations and the Courts will be discouraged.

The right of a litigant to be heard on an issue of law or fact dispositive of his claim is one of the most fundamental rights of due process of law. *Reynolds v. Cochran*, 365 U.S. 525; *Hovey v. Elliott*, 167 U.S. 409.

CONCLUSION

For the foregoing reasons, the petitions for a writ of certiorari should be granted and, upon granting of such certiorari, the determination of the Supreme Court of Delaware approving the settlement arrangements should be in all respects vacated and set aside and all proceedings remanded to the Chancellor of the State of Delaware for further investigation and hearings as requested by petitioners and Dann.

Respectfully submitted,

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